

March 26, 2019

VIA ONLINE SUBMISSION

Labor and Workforce Development Agency
455 Golden Gate Avenue, 9th Floor
San Francisco, CA 94102

To Whom It May Concern:

Pursuant to Labor Code §2699.3, the enclosed document identifies the specific provisions of the Labor Code alleged to have been violated, including the facts and theories to support the alleged violations, in the case of *Gutierrez v. Amazon Services LLC, et al.* Plaintiff seeks hereby to give notice to the LWDA of her representative claims.

Please refer to the attached Proof of Service which demonstrates that pursuant to Labor Code §2699.3, we are providing written notice of same by certified mail to the following employer at their designated agent for service of process:

Amazon Services, LLC
Amazon.com, Inc.
Amazon Logistics, Inc.
Amazon.com Services, Inc.
CSC- Lawyers Incorporating Service
2710 Gateway Oaks Drive, Suite 150N
Sacramento, CA 95833

Sincerely,



Allen Graves

Enclosures: Draft Complaint and Proof of Service
CC: Amazon Services, LLC; Amazon.com, Inc; Amazon Logistics, Inc;
Amazon.com Services, Inc.

1 THE GRAVES FIRM
2 ALLEN GRAVES (SB#204580)
3 allen@gravesfirm.com
4 JACQUELINE TREU (SB#247927)
5 jacqueline@gravesfirm.com
6 JENNY YU (SB#253033)
7 E-mail: jennyyu@gravesfirm.com
8 122 N. Baldwin Ave., Main Floor
9 Sierra Madre, CA 91024
10 Telephone: (626) 240-0575
11 Facsimile: (626) 737-7013

12 Attorneys for Plaintiff
13 Valery Gutierrez

14 SUPERIOR COURT OF THE STATE OF CALIFORNIA
15 COUNTY OF LOS ANGELES

16 VALERY GUTIERREZ, in her
17 individual and representative capacity,

18 Plaintiff,

19 v.

20 AMAZON SERVICES LLC,
21 AMAZON.COM, INC., AMAZON
22 LOGISTICS, INC., AMAZON.COM
23 SERVICES, INC., and DOES 1
24 through 10, inclusive,

25 Defendants.

CASE NO.:

**PRIVATE ATTORNEY GENERAL
COMPLAINT FOR:**

1. **Willful Misclassification;**
2. **Failure to Pay Overtime Wages;**
3. **Failure to Timely Pay Wages;**
4. **Failure to Pay Wages on Termination;**
5. **Failure to Provide Meal Breaks;**
6. **Failure to Provide an Accurate Itemized Paystub; and**
7. **Failure to Provide Equipment or Reimburse Business Expenses.**

DEMAND FOR JURY TRIAL

1 Plaintiff Valery Gutierrez (“Plaintiff”) alleges as follows:
2

3 **INTRODUCTION**

4 1. In this Complaint, Plaintiff uses the term “Driver” to refer to individuals
5 employed by Defendants Amazon Services LLC, Amazon.com, Inc., and Amazon.com
6 Services, Inc. (“Amazon” or “Defendants”) whose primary job duties consist of acquiring
7 and delivering goods as part of the delivery service that is an integral part of Amazon’s
8 primary business.

9 2. Plaintiff brings this Complaint as a Private Attorney General on behalf of
10 the State of California with regard to current and former Amazon Drivers pursuant to
11 California Labor Code §2699 *et seq.*, based on Defendant’s willful misclassification of its
12 Drivers as independent contractors.
13

14 **THE PARTIES**

15 3. Plaintiff Valery Gutierrez (“Gutierrez” or “Plaintiff”) is a citizen of the
16 United States and a resident of Los Angeles County, California. From a time beginning
17 prior to the filing of the instant complaint and continuing to the present day, Amazon has
18 employed Plaintiff to acquire and deliver products as part of the delivery service that is an
19 integral part of Amazon’s primary business.

20 4. Defendant Amazon Services LLC is a limited liability company organized
21 under the laws of the State of Nevada with its principal place of business in Seattle,
22 Washington.

23 5. Defendant Amazon.com, Inc. is a corporation organized under the laws of
24 the State of Delaware with its principal place of business in Seattle, Washington.

25 6. Defendant Amazon Logistics, Inc. is a corporation organized under the laws
26 of the State of Delaware with its principal place of business in Seattle, Washington.

27 7. Defendant Amazon.com Services, Inc. is a corporation organized under the
28 laws of the State of Delaware with its principal place of business in Seattle, Washington.

1 8. Plaintiff is currently unaware of the true names and capacities of the
2 Defendants sued herein as Does 1 through 10 (the “Doe Defendants”) and therefore sues
3 the Doe Defendants by such fictitious names. Plaintiff will amend this Complaint to
4 allege the true names and capacities of the Doe Defendants when they are ascertained.

5 9. Plaintiff is informed and believes, and thereon alleges, that the Doe
6 Defendants are the partners, agents, or principals and co-conspirators of the named
7 Defendants and of each other; that the named Defendants and the Doe Defendants
8 performed the acts and conduct herein alleged directly, aided and abetted the performance
9 thereof, or knowingly acquiesced in, ratified, and accepted the benefits of such acts and
10 conduct, and therefore each of the Doe Defendants is liable to Plaintiff to the extent of the
11 liability of the named Defendants as alleged herein.

12 10. Plaintiff is informed and believes, and on that basis alleges, that at all times
13 herein mentioned, all of the Defendants are and were a single employer.

14 11. Plaintiff is informed and believes, and on that basis alleges, that at all times
15 herein mentioned, each of the Defendants was the agent, servant, and/or employee of each
16 of the other Defendants and, in connection with the matters hereinafter alleged, was acting
17 within the scope of such agency and employment, and each Defendant ratified each and
18 every act, omission and thing done by each and every other Defendant herein.

19
20 **JURISDICTION AND VENUE**

21 12. This Court has jurisdiction in this action because: Defendant committed
22 violations of California law, including violations of the Wage Order, Labor Code and
23 Business and Professions Code, that affected Plaintiff in this county; and because service
24 was effected on one or more Defendants while voluntarily present in California.

25 13. Venue is proper under California Code of Civil Procedure §395.5, as this is
26 a county where liability against Defendants arises.

27 //

28 //

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 0
- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 0
- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8

2
34
5

6
7
8
9
0
1

2
3
4
5
6

7
8
9
20

22

23
24

25
26
27
28

1 21. Drivers are transportation workers engaged in foreign or interstate
2 commerce pursuant to Section 1 of the Federal Arbitration Act. 9 U.S.C. § 1.

3 22. Amazon employs Drivers throughout the State of California. Drivers are
4 required to go through a background check and watch detailed training videos on how
5 Amazon expects packages to be delivered. Training videos were mandatory for Drivers
6 who then must to take and pass quizzes on the subject matter of the videos.

7 23. Drivers are required to sign up ahead of time for available shifts consisting
8 of a specific block of time. Drivers rarely know when shifts will become available, and,
9 thus, must spend time logging into Amazon's application and refreshing the application
10 continuously to see if new shifts become available. Drivers are not paid for time on the
11 application searching for available shifts.

12 24. During their shifts, Drivers must report to the designated Amazon logistics
13 center where they are required to wait in a line to be assigned to deliver packages selected
14 and grouped together by Amazon. Drivers are not paid for the time spent waiting in line
15 at the Amazon logistics center.

16 25. The Drivers load and deliver the packages to the addresses specified by
17 Amazon. At some locations, Amazon directs Drivers to specific entryways or freight
18 elevators to make the deliveries.

19 26. Amazon pays Drivers a flat rate for each shift. Amazon does not provide
20 additional pay if the deliveries take longer than the estimated time.

21 27. The work performed by Drivers is within the usual course of Amazon's
22 business.

23 28. At all times relevant hereto, Plaintiff has been employed by Amazon as a
24 Driver, and has delivered goods purchased through Amazon's online website to Amazon's
25 customers using the Amazon application.

26 29. At all times relevant hereto, Amazon has engaged, suffered, or permitted the
27 Drivers, including Plaintiff, to work for Amazon.
28

1 30. At all times hereto, Amazon has retained the right to control the manner and
2 means of the Drivers' work.

3 31. At all times relevant hereto, Amazon has maintained a uniform policy of
4 classifying all Drivers, including Plaintiff, as independent contractors rather than
5 employees.

6 32. In order to deliver goods for Amazon, Drivers, including Plaintiff, are
7 required to use their own personal cellular phone or tablet device, and personal motor
8 vehicle. Drivers, including Plaintiff, have incurred costs as a result of the purchase,
9 maintenance and/or use of this equipment.

10 33. Amazon maintains a uniform policy of refusing to reimburse its Drivers,
11 including Plaintiff, for any of these costs.

12 34. Plaintiff is informed and believes, and thereon alleges, that Amazon's
13 misclassification of Drivers as independent contractors is willful and done in order to
14 deprive the Drivers of benefits due them, and to gain an economic advantage, with the full
15 knowledge that the law requires the Drivers to be classified as employees.

16
17 **FIRST CAUSE OF ACTION**

18 **(Willful Misclassification)**

19 35. Plaintiff realleges and incorporates herein by this reference the allegations
20 of Paragraphs 1 through 34 hereof, inclusive.

21 36. A worker is properly considered an independent contractor to whom the
22 Wage Order does not apply only if the hiring entity establishes: (A) that the worker is free
23 from the control and direction of the hirer in connection with the performance of the work,
24 both under the contract for the performance of such work and in fact; (B) that the worker
25 performs work that is outside the usual course of the hiring entity's business; and
26 (C) that the worker is customarily engaged in an independently established trade,
27 occupation, or business of the same nature as the work performed for the hiring entity.
28

1 37. The work performed by the Drivers at issue in this case is within the usual
2 course of Amazon's business, such that an employer-employee relationship is created
3 between Amazon and the Drivers.

4 38. Labor Code §226.8 prohibits any person or employer from willfully
5 misclassifying an individual who is an employee subject to the applicable Wage Order.

6 39. Since at least 2015 until the present, Amazon has maintained a uniform
7 policy whereby Amazon has misclassified all Drivers as independent contractors for
8 purposes of the Wage Order.

9 40. Through its misclassification of every Driver as an independent contractor
10 for purposes of the Wage Order, Amazon has engaged in a pattern and practice of willful
11 misclassification for its own financial benefit.

12 41. Pursuant to Labor Code §226.8, Plaintiff is entitled to recover civil penalties
13 for Amazon's misclassification of employees with regard to their employment
14 status under the Wage Order of not less than ten thousand dollars (\$10,000) and up to
15 twenty-five thousand dollars (\$25,000) for each violation, in addition to any other
16 penalties or fines permitted by law.

17 42. Plaintiff is entitled to recover attorney fees and costs in bringing this action.
18 Amazon is subject to an order requiring it to provide public notice of its violation of
19 Section 226.8, as required under sub-sections (e) and (f) thereof, in the event this Court
20 determines that a violation has been committed.

21
22 **SECOND CAUSE OF ACTION**

23 **(Failure to Pay Overtime Premiums)**

24 43. Plaintiff realleges and incorporates herein by this reference the allegations
25 of Paragraphs 1 through 42 hereof, inclusive.

26 44. At all times relevant hereto, Paragraph 3 of the applicable Wage Order and
27 California Labor Code §510 have required that Amazon pay each of its Drivers one and a
28 half his or her regular rate of pay for any work in excess of 8 hours in one workday, in

1 excess of 40 hours in one workweek, and for the first 8 hours of work on the seventh day
2 of a workweek. Labor Code §1198 explicitly requires all employers to comply with the
3 Wage Order.

4 45. Drivers work for Amazon in excess of 8 hours per day and in excess of 40
5 hours per week.

6 46. Plaintiff has worked for Amazon in excess of 8 hours in a day or 40 hours
7 per week.

8 47. Amazon's application tracks the time its Drivers spend on a shift. Amazon
9 is aware of the length of its Drivers' shifts.

10 48. Amazon's application can track when a Driver is on the Amazon
11 application looking for and signing up for shifts. Amazon is aware of the length of time
12 Drivers spend in order to book a shift. Drivers are not paid for this time.

13 49. Amazon has a uniform policy of intentionally failing to pay the overtime
14 premiums due to its Drivers, including Plaintiff, for overtime work.

15 50. Amazon owes its Drivers, including Plaintiff, overtime premiums earned.

17 **THIRD CAUSE OF ACTION**

18 **(Failure to Timely Pay Wages)**

19 51. Plaintiff realleges and incorporates herein by this reference the allegations
20 of Paragraphs 1 through 50 hereof, inclusive.

21 52. At all times relevant hereto, California Labor Code §204 requires that all
22 wages are due and payable twice in each calendar month.

23 53. Amazon violated Labor Code §204 by systematically refusing to pay
24 overtime premium wages due to Drivers under the Wage Order in a timely manner,
25 or at all.

1 **FOURTH CAUSE OF ACTION**

2 **(Failure to Pay Wages on Termination)**

3 54. Plaintiff realleges and incorporates herein by this reference the allegations
4 of paragraphs 1 through 53 hereof, inclusive.

5 55. Labor Code §§201 and 202 require that Amazon pay each Driver all of the
6 wages earned by that employee at the time of termination for an involuntary termination
7 and within 72 hours of termination for a voluntary termination.

8 56. At all times relevant hereto, Amazon has terminated Drivers who were
9 entitled to overtime wages earned under the applicable Wage Order at the time that the
10 Drivers' employment with Amazon ended.

11 57. At all times relevant hereto, Drivers who were entitled to overtime wages
12 earned under the applicable Wage Order have voluntarily quit their jobs.

13 58. Amazon maintains a policy and practice of willfully refusing to pay any
14 Driver the overtime wages to which he or she is entitled under the Wage Order, at any
15 time after that Driver's termination or resignation.

16
17 **FIFTH CAUSE OF ACTION**

18 **(Failure to Provide Meal Breaks)**

19 59. Plaintiff realleges and incorporates herein by this reference the allegations
20 of paragraphs 1 through 58 hereof, inclusive.

21 60. At all times relevant hereto, Paragraph 11 of the applicable Wage Order
22 requires that no employer shall employ any person for a work period of more than five
23 hours without a meal period of not less than 30 minutes. Labor Code §1198 explicitly
24 requires all employers to comply with the Wage Order.

25 61. Drivers work for Amazon in excess of 5 hours per day.

26 62. Plaintiff has worked for Amazon in excess of 5 hours in a day.

27 63. Amazon does not relieve drivers for duty for a meal break after five hours of
28 work in a shift.

1 64. Plaintiff has worked shifts in excess of five hours without being relieved of
2 duty for a meal break.

3
4 **SIXTH CAUSE OF ACTION**

5 **(Failure to Provide an Accurate Itemized Paystub)**

6 65. Plaintiff realleges and incorporates herein by this reference the allegations
7 of Paragraphs 1 through 64 hereof, inclusive.

8 66. At all times relevant hereto, Paragraph 7 of the applicable Wage Order has
9 required that every employer shall semimonthly, or at the time of each payment of wages,
10 furnish each employee an itemized statement in writing showing: (1) all deductions;
11 (2) the inclusive dates of the period for which the employee is paid; (3) the name of the
12 employee or the employee's social security number; and (4) the name of the employer.

13 67. California Labor Code §226(a) requires that each pay period Amazon must
14 provide each Driver with an itemized statement as required by the Wage Order.

15 68. At all times relevant hereto, Amazon violated the Wage Order and Labor
16 Code §226(a) by willfully and intentionally failing to provide Drivers with any itemized
17 statement at all.

18
19 **SEVENTH CAUSE OF ACTION**

20 **(Failure to Provide Equipment or Reimburse Business Expenses)**

21 69. Plaintiff realleges and incorporates herein by this reference the allegations
22 of Paragraphs 1 through 68 hereof, inclusive.

23 70. At all times relevant hereto, Paragraphs 8 and 9 of the applicable Wage
24 Order have required that an employer provide its employees with any tools or equipment
25 that are required by the employer or are necessary to the performance of the job.

26 71. Compliance with Paragraphs 8 and 9 of the applicable Wage Order is
27 required by Labor Code §1198.
28

1 72. Drivers uniformly work periods where they earn less than twice the
2 minimum wage. Plaintiff has worked periods for Defendant wherein she earned less than
3 twice the minimum wage.

4 73. Working as a Driver is not customarily recognized as a trade or craft.

5 74. Amazon requires every Driver, including Plaintiff, to use a cellular
6 telephone or tablet device with a wireless data connection in order to search for and accept
7 available shifts, check in when picking up packages, get directions on when and how to
8 deliver the packages, check in when packages are delivered, take pictures of the delivered
9 packages, contact Amazon support when there are delivery issues, and contact and receive
10 calls from customers. Although these devices are specifically required by Amazon to
11 work as a Driver, there is no established custom whereby these tools are customarily
12 required as part of any trade or craft applicable to Drivers.

13 75. Amazon requires every Driver, including Plaintiff, to use a motor vehicle in
14 order to deliver products. Amazon's requirement that Drivers use their own vehicle is
15 inconsistent with any applicable custom, in that employers who require employees make
16 deliveries of retail goods customarily provide the vehicles used to make the deliveries.

17 76. Amazon's Drivers, including Plaintiff, have incurred costs as a result of
18 purchasing, maintaining and/or using the cellular phone or tablet and motor vehicle
19 necessary to perform their jobs.

20 77. During all times relevant hereto, Amazon maintained a uniform policy of
21 refusing to provide cellular telephones, tablet devices, toll tags, and motor vehicles to
22 Drivers, despite the fact that this equipment is both required by Drivers and necessary to
23 the performance of the job.

24 78. During all times relevant hereto, Amazon maintained a uniform policy of
25 refusing to reimburse Drivers for the cost of cellular telephones, tablet devices, wireless
26 data connections, toll tags, and motor vehicles despite the fact that the equipment and
27 items are both required by Amazon and necessary to the performance of the job.
28

1 79. Amazon's conduct as described herein also violates California Labor Code
2 section 2802.

3
4 **PRAYER FOR RELIEF**

5 WHEREFORE, Plaintiff prays for judgment against Amazon, and Does 1 through
6 10, inclusive, and each of them, as follows to the extent that the listed relief can be may be
7 recovered by a Private Attorney General pursuant to California Labor Code §2699 *et seq.*:
8

9 **ON THE FIRST CAUSE OF ACTION:**

- 10 1. For the civil penalties described in Labor Code §226.8 for all violations set
11 forth by this cause of action, pursuant to Labor Code §2699(a);
12 2. For the relief provided for by Labor Code §226.8(e) and (f); and
13 3. For attorney fees and costs reasonably incurred, pursuant to California Labor
14 Code §2699(g).
15

16 **ON THE SECOND CAUSE OF ACTION:**

- 17 1. For the civil penalties described in Labor Code §558 (exclusive of amounts in
18 recovery of underpaid wages) for all violations set forth by this cause of action,
19 pursuant to Labor Code §2699(a);
20 2. For the civil penalties described in Labor Code §1197.1 (exclusive of amounts
21 in recovery of underpaid wages or liquidated damages) for all violations set
22 forth by this cause of action, pursuant to Labor Code §2699(a);
23 3. For attorney fees and costs reasonably incurred, in accordance with Labor Code
24 §§2699(g).
25
26
27
28

1 **ON THE THIRD CAUSE OF ACTION:**

- 2 1. For the civil penalties described in Labor Code §210 (exclusive of amounts in
3 recovery of underpaid wages) for all violations set forth by this cause of action,
4 pursuant to Labor Code §2699(a);
5 2. For attorney fees and costs reasonably incurred, in accordance with
6 Labor Code §2699(g).

7
8 **ON THE FOURTH CAUSE OF ACTION:**

- 9 1. For civil penalties pursuant to Labor Code §2699(f) for all violations set forth
10 by this cause of action; and
11 2. For attorney fees and costs reasonably incurred, in accordance with Labor Code
12 §2699(g).

13
14 **ON THE FIFTH CAUSE OF ACTION:**

- 15 1. For the civil penalties described in Labor Code §558 (exclusive of amounts in
16 recovery of underpaid wages) for all violations set forth by this cause of action,
17 pursuant to Labor Code §2699(a);
18 2. For the civil penalties described in Labor Code §1197.1 (exclusive of amounts
19 in recovery of underpaid wages or liquidated damages) for all violations set
20 forth by this cause of action, pursuant to Labor Code §2699(a);
21 3. For attorney fees and costs reasonably incurred, in accordance with Labor Code
22 §§2699(g).

23
24 **ON THE SIXTH CAUSE OF ACTION:**

- 25 1. For the civil penalties described in Labor Code §226.3 for all violations set
26 forth by this cause of action, pursuant to Labor Code §2699(a); or for the civil
27 penalties set forth by Labor Code §2699(f) in the event that under Labor Code
28 §2699(a) are not available; and

- 1 2. For attorney fees and costs reasonably incurred, in accordance with Labor Code
2 §2699(g).

3
4 **ON THE SEVENTH CAUSE OF ACTION:**

- 5 1. For civil penalties pursuant to Labor Code §2699(f) for all violations set forth
6 by this cause of action; and
7 2. For attorney fees and costs reasonably incurred, in accordance with Labor Code
8 §2699(g).

9
10 **ON ALL CAUSES OF ACTION:**

- 11 1. For costs of suit, to the extent not otherwise prayed for above;
12 2. For attorney fees to the extent not otherwise prayed for above;
13 3. For interest on amounts recoverable; and
14 4. For such other and further relief as this Court deems just and proper.

15
16 **DEMAND FOR JURY TRIAL**

17 Plaintiff hereby demands a jury trial.

18
19 DATED: March XX, 2019

THE GRAVES FIRM

20
21 By: _____

22 ALLEN GRAVES

23 Attorney for Plaintiff

24 Valery Gutierrez
25
26
27
28

1 **PROOF OF SERVICE**

2 STATE OF CALIFORNIA)
3) ss:
4 COUNTY OF LOS ANGELES)

5 I am employed in the County of Los Angeles, State of California. I am over the
6 age of 18, and not a party to the within action. My business address is 122 N. Baldwin
Ave., Main Floor, Sierra Madre, CA 91024.

7 On March 26, 2019, I served the following document(s) described as:

8 **LWDA CLAIM LETTER AND DRAFT COMPLAINT**

9 on the interested parties as follows:

10
11 Amazon Services, LLC
12 Amazon.com, Inc.
13 Amazon Logistics, Inc.
14 Amazon.com Service, Inc.
15 CSC – Lawyers Incorporating Service
2710 Gateway Oaks Drive, Suite 150N
Sacramento, CA 95833

16 ☐ **VIA OVERNIGHT MAIL:**

17 By delivering such document(s) to an overnight mail service or an authorized courier in a sealed
18 envelope or package designated by the express service courier addressed to the person(s) on whom it
is to be served.

19 ☐ **VIA EMAIL:**

20 I personally sent such document(s) via email to the known email address of the person(s) on whom it
is to be served before 5:00 p.m.

21 ☒ **VIA U.S. CERTIFIED MAIL:**

22 I am readily familiar with the firm's practice of collection and processing of correspondence for
mailing. Under that practice such sealed envelope(s) would be deposited with the U.S. postal service
on March 26, 2019 with postage thereon fully prepaid, at Sierra Madre, California.

23
24 I declare under penalty of perjury under the laws of the State of California that the
25 above is true and correct and was executed on March 26, 2019, at Sierra Madre,
California.

26
27 Kevin Karr
28 Type or Print Name


Signature